

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

HALLMARK INSURANCE COMPANY,

Plaintiff,

vs.

GAIL HOEFERT and AARON HOEFERT,
as Personal Representatives of THE
ESTATE OF ANDREW JOSEPH HOEFERT;
GAIL HOEFERT and KERRY HOEFERT,
as Legal Guardians of B.E.H. (minor) and
C.T.H. (minor); KEVIN TYCZ, as Personal
Representative of THE ESTATE OF
JENNIFER CHRISTINE HOEFERT;
ERIC J. LUPKES; LOGAN HEALTH, d/b/a
LOGAN HEALTH MEDICAL CENTER;
PARNTERS UNITED FOR LIFE SAVING
EDUCATION, d/b/a JEFFERSON VALLEY
EMS & RESCUE; SCL HEALTH MEDICAL
GROUP – BUTTE, LLC; DE SMET
INSURANCE COMPANY OF SOUTH
DAKOTA; and FEDEX CORPORATION,

Defendants.

4:22-CV-4069

**ANSWER
TO
COMPLAINT IN
INTERPLEADER**

COME NOW the above-named Defendants, Gail Hoefert and Aaron Hoefert, as Personal Representatives of The Estate of Andrew Joseph Hoefert; Gail Hoefert and Kerry Hoefert, as Legal Guardians of B.E.H. (minor) and C.T.H. (minor); and Kevin Tycz, as Personal Representative of The Estate of Jennifer Christine Hoefert (hereinafter referred to as “these Defendants”), and for their Answers to the Complaint of Plaintiff Hallmark Insurance Company, state and allege as follows:

1.

Defendants admit the Court has jurisdiction over the parties and this action is properly venued.

2.

That these Defendants admit that portion of the Plaintiff's Complaint regarding the residence of Gail Hoefert and Kerry Hoefert as Minnehaha County, South Dakota. These Defendants assert Personal Representative Aaron Hoefert is a resident of Lake County, South Dakota. These Defendants assert Personal Representative Kevin Tycz is a resident of Bon Homme County, South Dakota. These Defendants lack sufficient information to admit nor deny the residence of Eric Lupkes.

3.

That these Defendants further admit the allegations contained in Paragraphs 2, 3, 4, 5, and 6 of the Plaintiff's Complaint.

4.

That these Defendants further admit the allegations in Paragraphs 7 and 8 as to the disclosed face value of the policies of insurance and the potential claimants to such insurance as plead in the Plaintiff's Complaint.

5.

That these Defendants, upon information and belief, admit Paragraph 9 of the Plaintiff's Complaint.

6.

That these Defendants admit Paragraphs 10, 11, and 12 of the Plaintiff's Complaint.

7.

That these Defendants admit Paragraphs 14, 15, 16, and 17 of the Plaintiff's Complaint.

8.

That these Defendants are without sufficient information at this time to admit or deny Paragraph 18 of the Plaintiff's Complaint.

9.

That these Defendants, upon information and belief, admit Paragraph 19 of the Plaintiff's Complaint.

10.

That, in regard to this Interpleader action, these Defendants admit Paragraphs 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, and 30 of the Plaintiff's Complaint.

11.

That these Defendants admit Eric Lupkes is the natural father of Abbigail Vitek, but would deny Eric Lupkes has initiated any court proceeding or has asserted a claim for the wrongful death of Abbigail Vitek to these Defendants.

12.

That these Defendants admit Paragraphs 32 and 33 of the Plaintiff's Complaint and assert such claims will have or will be initiated to recover the insurance coverage of the Hallmark policy.

13.

That these Defendants assert at the current time it has been determined by the legal guardians of B.E.H. or C.T.H. to assert no claim for the bodily injuries incurred by B.E.H. or C.T.H. as a result of the collision referenced in Paragraph 21.

14.

That these Defendants admit Paragraphs 35, 36, 37, 38, and 39.

15.

That these Defendants admit the Plaintiff is entitled to bring this action for Interpleader but can neither admit nor deny this Plaintiff will be the subject of double

or multiple liability in light of its commencement of this Interpleader action, deposit of insurance proceeds, and/or admission of liability.

16.

That these Defendants specifically deny the Plaintiff is entitled to attorney fees being assessed against this Defendant or the Estates of Andrew Hoefert, Jennifer Hoefert, or the Guardianship of B.E.H. and C.T.H.

WHEREFORE, these Defendants respectfully request:

1.

That the Court entertain this Interpleader action.

2.

That these Defendants deny an injunction is a proper or appropriate remedy in this action as the deposit of funds and the commencement of this Interpleader properly protects the Plaintiff from multiple claim on the insurance proceeds.

Respectfully submitted this 28th day of June, 2022.

/s/ Dennis Duncan

Dennis Duncan

THE DUNCAN LAW FIRM, LLP

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*Attorney for Gail Hoefert and Aaron Hoefert,
as Personal Representatives of The Estate of
Andrew Joseph Hoefert; Gail Hoefert and Kerry
Hoefert, as Legal Guardians of B.E.H. (minor)
and C.T.H. (minor); Kevin Tycz, as Personal
Representative of The Estate of Jennifer
Christine Hoefert*

CERTIFICATE OF SERVICE

The undersigned hereby certified that a true and correct copy of the foregoing Answer to Complaint in Interpleader was filed with this Court and served upon the following:

Hallmark Insurance
c/o Jeff W. Wright
Heidman Law Firm, PLLC
1128 Historic Fourth Street
PO Box 3086
Sioux City, IA 51102

Eric Lupkes
306 West 6th Street, Apt. 177
Hartford, SD 57033-2125

Logan Health d/b/a Logan Health Medical Center
William Gibson (Registered Agent)
310 Sunnyview Lane
Kalispell, MT 59901

Partners United for Life Saving Education
d/b/a Jefferson Valley EMS & Rescue
Denise Bausch (Registered Agent)
137 Bench Road
Whitehall, MT 59759

SCL Health Medical Group – Butte, LLC
Incorp Services, Inc. (Registered Agent)
302 North Last Chance Gulch#409
Helena, MT 59601

DeSmet Insurance Company of South Dakota
Division of Insurance (Agent for Service)
124 South Euclid Avenue, 2nd Floor
Pierre, SD 57501

FedEx Corporation
CT Corporation System (Registered Agent)
300 Montvue Road
Knoxville, TN 37919-5546

Dated this 28th day of June, 2022.

/s/ Dennis Duncan
Dennis Duncan